

HOUSE No. 4301

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 23, 2012.

The committee on Ways and Means, to whom was referred the Bill relative to the list of legal investments prepared by the Commissioner of Banks (House, No. 290), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4301).

For the committee,

BRIAN S. DEMPSEY.

HOUSE No. 4301

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to the list of legal investments prepared by the Commisioner of Banks.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 54 of chapter 44 of the General Laws, as appearing in the 2010 Official
2 Edition, is hereby amended by striking out the first sentence and inserting in place thereof the
3 following sentence:—

4 Trust funds, including cemetery perpetual care funds, unless otherwise provided or
5 directed by the donor thereof, shall be deposited in a trust company, co-operative bank or savings
6 bank, if such bank or trust company is organized or exists under the laws of the commonwealth
7 or any other state of the United States or is otherwise authorized to transact business in the
8 commonwealth and has its main office or a branch office in the commonwealth; a national bank,
9 federal savings bank, federal savings and loan association, if such bank is authorized to transact
10 business and has it main office or a branch office in the commonwealth; provided that any such
11 state-chartered or federally chartered bank shall be insured by the Federal Deposit Insurance
12 Corporation or its successor; or invested by cities and towns in participation units in a combined
13 investment fund under section 38A of chapter 29 in an amount not exceeding \$100,000, or in
14 bonds or notes which are legal investments for savings banks.

SECTION 2. Chapter 44 of the General Laws is hereby amended by striking out section 55A, as so appearing, and inserting in place thereof the following section:—

Section 55A. A city, town, district or regional school district officer receiving public money and lawfully and in good faith and in the exercise of due care depositing the same in a trust company, co-operative bank or savings bank, if such bank or trust company is organized or exists under the laws of the commonwealth or any other state of the United States or is otherwise authorized to transact business in the commonwealth and has its main office or a branch office in the commonwealth; a national bank, federal savings bank or federal savings and loan association, if such bank or association is authorized to transact business and has its main office or branch office in the commonwealth; or in participation units in a combined investment fund under section 38A of chapter 29, or, in the case of the city of Boston, in accordance with the provisions of section 55 in a national bank or trust company in the city of New York, provided that any such state-chartered or federally chartered bank shall be insured by the Federal Deposit Insurance Corporation or its successor; shall not be personally liable to the city, town, district or regional school district for any loss of such money by reason of the closing or liquidation of any such depository institution described above.

SECTION 3. Chapter 167 of the General Laws is hereby amended by striking out section 15A, as so appearing, and inserting in place thereof the following 11 sections:—

Section 15A. (a) As used in sections 15A to 15K, inclusive, the term "legal list" or "legal investments" shall mean the list of securities approved for investment by the commissioner.

(b) On or before July 1 of each year, the commissioner shall prepare a list of all stocks, bonds, notes and other interest-bearing obligations which are then legal investments under any provision

of sections 15B through 15K, inclusive, provided that all privately placed or held issues may, in the discretion of the commissioner, be omitted. An entity issuing such an instrument shall identify itself directly to the commissioner as being eligible to be included on such list under the authorities specified in section 15E through 15K, inclusive, provided however that the commissioner shall have the discretion as to whether to add any such entity and instrument to the list. Such list shall include the name of any investment fund, approved by the commissioner, which invests only in such stocks, bonds, notes and other interest bearing obligations. The shares of any such investment fund so approved shall be legal investments pursuant to this section to the same extent as any such stocks, bonds, notes and other interest bearing obligations. Said list shall at all times be public. In the preparation of any list hereunder which the commissioner is required to prepare or furnish, he may employ such expert assistance as he deems proper or may rely upon information contained in publications which he deems authoritative in reference to such matters, and he shall be in no way held responsible or liable for the omission from such list of the name of any state or political subdivision or authority thereof or of any corporation or association the stocks, bonds, notes or other interest bearing obligations of which conform or any investment fund which conforms to this chapter, or for the omission of any investment funds, stocks, bonds, notes or other interest bearing obligations which so conform; nor shall he be held responsible or liable for the inclusions in such list of any such names or of any investment funds, stocks, bonds, notes or other interest bearing obligations which do not so conform.

(c) Officers and members of a board of a bank or credit union may rely upon the legal list referred to in this section as representing an accurate listing of investment funds, stocks, bonds, notes and other interest bearing obligations eligible for investment by it; and no such officer or member shall be personally liable for any loss incurred by such bank arising from the purchase in

good faith of any shares in an investment fund or security appearing on said list at the time of such purchase.

(d) Subsequent to the annual preparation of such list, the commissioner may add the name of any investment fund which meets the requirements of this section.

(e) Before making any such investment under this section an entity shall conduct an appropriate level of due diligence to determine if an investment is both permissible and appropriate . This may include both internal as well as external analysis. For debt instruments, such analysis shall not rely solely on one or more credit rating agencies and such entity shall determine that such instrument has both a low risk of default by the obligor and that the full and timely repayment is expected over the expected life of the investment.

Section 15B. (a) The list of legal investments prepared pursuant to section 15A may include securities that are approved for investment in accordance with this section.

(b) The securities eligible for approval for investment under this section may include: (1) interest bearing obligations of any state, county, city, town or district or any subdivision or instrumentality thereof, and of any authority established under the laws of the United States or any state, county, town or district, including obligations of any of the foregoing payable from specified revenues; (2) interest bearing obligations of any corporation organized under the laws of the United States or any state and of any association, the business of which is conducted or transacted by trustees under a written instrument or declaration of trust, having its principal place of business in the commonwealth, and (3) preferred and common stock of any corporation described in the foregoing clause (2). Obligations to be eligible pursuant to clauses (1) and (2) shall have an initial offering of at least \$50,000,000 and be rated at least a single A.

(c) Upon application by 3 credit unions which have been chartered pursuant to chapter 171, which have submitted in such form and under such conditions as the commissioner may require, requesting authority to invest their deposits and the income derived therefrom in any of the interest bearing obligations or stocks referred to in paragraph 1 of this section, said credit unions may request the commissioner, in such form and under such conditions as in his discretion he may require, authorize, notwithstanding any general or special law to the contrary, the investment in any such interest bearing obligations or stock.

(d) If the commissioner grants such authority he shall forthwith add the name of such investment to the list provided for in section 15A. At any time thereafter the commissioner may, on his own initiative, revoke such authority.

(e) If the commissioner shall have authorized investment in an issue of bonds in accordance with any of the provisions of this section, and if thereafter but before such authorization shall have been revoked the issuer shall issue bonds the proceeds of which are to be used solely to refund the issue previously authorized for investment or another issue of equal or shorter maturity and of equal or prior security and if such new bonds shall be of equal security with the previously authorized issue and of equal or shorter maturity the commissioner may authorize investment in such refunding bonds, and thereafter may revoke such authority on his own initiative. If the commissioner shall have authorized investment in an issue of bonds in accordance with any of the provisions of this section, and if thereafter but before such authorization shall have been revoked the issuer shall issue bonds of which at least 90 per cent of the proceeds are to be used to refund the issue previously authorized for investment or another issue of equal or prior security, the

security for the new bonds is not less than that for the previously authorized issue then the commissioner may authorize investment in such new bonds and thereafter may revoke such authority on his own initiative.

(f) In determining that any investments authorized under the provisions of this section should be included in the list of legal investments or deleted from said list, the commissioner may employ such expert assistance as he deems proper or may rely upon information contained in publications which he deems authoritative in reference to such matters.

(g) Not more than 10 per cent of the assets of such entity shall be invested in investments authorized under this section.

Section 15C. An entity authorized to invest pursuant to section 15A or the legal list may invest in bonds, notes or other interest bearing obligations of the following classes:

(1) direct obligations of the United States, or in such obligations as are unconditionally guaranteed as to the payment of principal and interest by the United States;

(2) legally issued, assumed or unconditionally guaranteed bonds, notes or other interest bearing obligations of the commonwealth, including legally issued bonds, notes or other indebtedness of an entity established as a public instrumentality by general or special law;

(3) legally issued, assumed or unconditionally guaranteed bonds, notes or other interest bearing obligations of any state of the United States other than this commonwealth, which has: not within the 20 years prior to the making of such

investment defaulted for a period of more than 120 days in the payment of any part of either principal or interest of any legally issued or assumed obligation; provided, that the full faith and credit of such state is pledged for the payment of the principal and interest of such obligations;

(4) bonds, notes or other obligations issued or guaranteed as to both principal and interest by the Dominion of Canada or any of its provinces provided, (a) that such bonds, notes or obligations shall be payable in United States funds either unconditionally or at the option of the holder thereof, and (b) that at the date of investment the said Dominion of Canada or the applicable province of Canada shall not have been in default in the payment of interest or principal of any of its obligations for a period in excess of 31 days at any time within the 20 years preceding such date of investment. Not more than 5 per cent of the assets of an entity authorized to invest pursuant to section 15A or the legal list, so called, may be invested in obligations authorized under this paragraph;

(5) bonds, notes or obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank or the Asian Development Bank containing an unconditional promise to pay, or an unconditional guarantee of the payment of, the interest thereon regularly, and the principal thereof on or before a specified date, in lawful currency of the United States; provided, that not more than 3 per cent of the assets of an entity authorized to invest pursuant to section 15A or the legal list, so called, shall be invested in such bonds, notes or obligations; and provided, further, that the commissioner may at any time on his own initiative suspend the authorization granted

by this paragraph for such period or periods as he may determine;

(6) obligations of, or instruments issued by and fully guaranteed as to principal and interest by, the Federal National Mortgage Association, established under the National Housing Act, as amended;

(7) debentures, bonds or other obligations issued by any federal home loan bank or consolidated federal home loan bank debentures or bonds issued by the federal home loan bank board under the Federal Home Loan Bank Act, as amended;

(8) debentures issued by the central bank for co-operatives or consolidated debentures issued by said central bank and the 12 regional banks for co-operatives under the Farm Credit Act of 1933, as amended;

(9) collateral trust debentures or other similar obligations issued by any federal intermediate credit bank or consolidated debentures or other similar obligations issued by the federal intermediate credit banks under the Federal Farm Loan Act, as amended;

(10) farm loan bonds issued by any federal land bank under the Federal Farm Loan Act, as amended;

(11) promissory notes representing domestic farm labor housing loans authorized by federal law when such notes are fully guaranteed as to principal and interest by the Farmers Home Administration of the United States Department of Agriculture;

(12) bonds, notes or obligations issued, assumed or guaranteed by the Export-Import Bank of the United States;

(13) obligations of any person, including any form of mortgage backed

security, as to which the payment of principal and interest according to the terms of such obligations is guaranteed by the Government National Mortgage Association under the provisions of the National Housing Act, as amended;

(14) certificates issued by the Federal Home Loan Mortgage Corporation representing interests in mortgage loans made, acquired or participated in by the said Federal Home Loan Mortgage Corporation; and

(15) system-wide obligations issued under the provisions of the Farm Credit Act of 1971, as amended, by institutions included in the federal farm credit system.

Section 15D. An entity authorized to invest pursuant to section 15A or the legal list may invest in bond, notes or other interest bearing obligations of the following classes:

(1) legally issued or assumed bonds, notes or other interest bearing obligation of a county, city town or legally established district of this commonwealth; and

(2) legally issued or assumed bonds, notes or other interest bearing obligation of a county city town or legally established district of this commonwealth; provided, however, that this provision shall not authorize investments in obligations of any city or town situated outside the commonwealth which has been in default for more than 120 days in the payment of any part of principal and interest of all bonds notes or other interest bearing obligations legal for investment under any provision of this section.

The full faith and credit of the county, city, town or district shall be pledged for the full payment of principal and interest of all bonds, notes or other interest bearing obligations legal for investment under any provision of this section.

Section 15E. (a) An entity authorized to invest pursuant to section 15A or the legal list may invest in bonds, notes or other interest bearing obligations of railroad corporations

199 subject to the conditions, limitations and requirements of this section.

200 (b) With respect to bonds, such obligations shall be those of a railroad incorporated in the
201 United States or any state thereof and which is doing business principally within the United
202 States and shall contain an unconditional promise to pay the interest thereon regularly and to pay
203 the principal at a specified date, which promise may be modified, if at all, only by vote of
204 holders of at least 75 per cent in amount of such bonds.

205 Not more than 20 per cent of the assets of such entity shall be invested in such railroad
206 obligations.

207 (c) Investments in railroad equipment obligations shall be those of, or guaranteed by, a railroad
208 incorporated in the United States or any state thereof and which is doing business principally
209 within the United States.

210 Section 15F. (a) As used in section 15F and 15G, the term "bond" includes a note or debenture.

211 (b) An entity authorized to invest pursuant to section 15A or the legal list may invest in
212 the bonds of any company which at the time of such investment is incorporated under the laws of
213 the United States or any state thereof, or the District of Columbia, and authorized to engage, and
214 engaging, in the business of furnishing telephone service in the United States, subject to the
215 following conditions: (1) The bonds shall be part of an original issue of not less than
216 \$25,000,000 in principal amount when the company is not incorporated in the commonwealth;
217 and (2) not more than 20 per cent of the assets of such entity shall be invested in the bonds of
218 telephone companies.

219 Section 15G. (a) An entity authorized to invest pursuant to section 15A or the legal list
220 may invest in bonds, notes or other interest bearing obligations of a gas, electric light or water
221 company incorporated or doing business in this commonwealth and subject to the control and

222 supervision thereof.

223 (b) An entity authorized to invest pursuant to section 15A or the legal list, so called,
224 may invest in the bonds of any company which at the time of such investment is incorporated
225 under the laws of the United States or any state thereof, or the District of Columbia, and
226 transacting the business of supplying electrical energy or artificial gas, or natural gas purchased
227 from another company and supplied in substitution for, or in mixture with, artificial gas, for
228 light, heat, power and other purposes, or transacting any or all of such business. The bonds shall
229 be part of an original issue of not less than \$25,000,000 in principal amount.

230 (c) Not more than 25 per cent of the assets of such entity shall be invested in obligations under
231 this section, nor shall more than 4 per cent be invested in the obligations of any one such
232 company.

233 Section 15H. (a) An entity authorized to invest pursuant to section 15A or the legal
234 list may invest in the common stock of the following banking corporations and bank
235 holding companies subject to the conditions, limitations and requirements of this
236 section.

237 (b) In the common stock, provided there is no preferred stock outstanding, of a bank in
238 stock form incorporated under the laws of and doing business within the common-
239 wealth, or in the common stock, provided there is no preferred stock outstanding, of a
240 federally chartered bank in stock form doing business within the commonwealth. Such
241 state-chartered or federally-chartered bank shall be well capitalized under bank
242 regulatory criteria.

243 (c) In the common stock of a state-chartered bank or federally chartered bank doing business
244 anywhere within the United States, which is a member of the federal reserve system and is well

capitalized under bank regulatory criteria.

(d)(1) In the common stock of a bank holding company, as defined in chapter 167A, provided such stock is received pursuant to an offer made by such bank holding company to exchange shares of its common stock for shares of a bank in stock form incorporated under the laws of the commonwealth or for shares of a federally-chartered bank doing business in the commonwealth, or provided that such stock is received pursuant to a plan for the merger or consolidation of any such bank with or into, or the transfer, sale or exchange of property or of assets of such bank or with a bank in stock form incorporated under the laws of this commonwealth or a federally-chartered bank doing business in this commonwealth the stock of such bank, as the case may be, is at the time owned by such bank holding company.

(2) In the common stock of a bank holding company, as defined in chapter 167A, acquired otherwise than as set forth in the foregoing provisions of clause (a), or in the common stock of a bank holding company, as defined in the federal Bank Holding Company Act of 1956. The holding company shall own 80 per cent or more of the voting stock of the qualifying bank. If at any time after an investment in the common stock of any such bank holding company, no bank of such holding company meets the requirements of paragraph 1 or 2, such holding company's stock shall be disposed of within such reasonable time as the commissioner shall determine.

(e) In the common stock of a company as defined in chapter one hundred and sixty-seven A or in the federal Bank Holding Company Act of 1956, provided such banking institution or bank is of the kind referred to in paragraph 1 or 2 and such stock of such banking institution or bank represents at least 50 per cent of such company's assets at book value at the end of its fiscal year immediately preceding the date of investment or at the date of investment in the case of a newly formed company.

Section 15I. Subject to applicable banking law, an entity authorized to invest pursuant to section 15A or the legal list, so called, may purchase the whole or any part of the stock of a savings bank, co-operative bank, federal savings and loan association or federal savings bank provided that any such bank or association is well capitalized under bank regulatory criteria.

Section 15J. An entity authorized to invest pursuant to section 15A or the legal list, so called, may invest in the capital stock of any insurance company authorized to conduct a fire and casualty insurance business in the commonwealth, subject to the conditions, limitations and requirements of this section.

No insurance stock shall be purchased if the cost thereof added to the cost of insurance stocks and bank stocks already owned shall exceed $66 \frac{2}{3}$ per cent of the total of the assets of such entity.

Section 15K. An entity authorized to invest pursuant to section 15A or the legal list, so called, may invest in securities of any of the classes described below in this section.

Debentures, convertible debentures, notes or other evidences of indebtedness of (a) a banking corporation in the common stock of which such corporation may invest pursuant to paragraph 1 of section 15H; provided, that such entity authorized to invest pursuant to section 15A or the legal list, so called, is well capitalized under regulatory criteria, (b) a banking corporation in the common stock of which such corporation may invest pursuant to paragraph 2 of said section 15H is well capitalized under regulatory criteria.

SECTION 4. Chapter 171 of the General Laws is hereby amended by adding after section 67A the following section:—

Section 67B. Upon a two-thirds vote of its board of directors, a credit union which has strong management, is well-capitalized and has at least a satisfactory rating at the most recent community reinvestment examination conducted by the commissioner pursuant to section 14 of chapter 167 may apply to the commissioner to invest in shares of stock registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 USC 78a or for which quotations are available through the Financial Industry Regulatory Authority or any comparable service designated by the commissioner; provided that such investment shall be made in the exercise of the judgment and care consistent with the “Prudent Man” rule, so-called and as provided herein. In making such application to the commissioner for “Prudent Man” authority, so-called, as provided herein, such credit union shall also have adequate policies and procedures governing the performance of such activity by the credit union and its employees, to minimize any credit, market, liquidity, operational, legal and reputational risks to the credit union. A credit union shall submit such other information the commissioner may deem necessary to properly evaluate an application. The commissioner may consider any other information available to the division of banks in determining whether to approve or reject an application. Any such approval granted by the commissioner shall be subject to such conditions and limitations as he may impose.

A credit union may apply to invest up to 20 per cent of its assets under the authority of this section. The percentage of such assets authorized shall be determined by the commissioner. The commissioner may increase, modify, curtail or rescind or otherwise limit a credit union’s authority to make such investments.

Before making any such investment under this section a credit union shall conduct an appropriate level of due diligence to determine if an investment is both permissible and appropriate. This

may include both internal as well as external analysis. For debt instruments, such analysis shall not rely solely on 1 or more credit rating agencies and such credit union shall determine that such instrument has both a low risk of default by the obligor and that the full and timely repayment is expected over the expected life of the investment.

A credit union shall take into consideration the following:

(1) when considering the purposes, terms, and other circumstances of the credit union, including those set forth in this section, whether the investment would meet the “prudent man” standard whereby the credit union shall exercise reasonable care, skill, and caution in making its investments and management decisions;

(2) whether the investment or management decision is consistent with an overall investment strategy reasonably suited to the credit union;

(3) consideration of circumstances relevant to the credit union in investing and managing its assets, including: : (i) general economic conditions; (ii) the possible effect of inflation or deflation; (ii) the role that each investment or course of action plays within the overall credit union investment philosophy; (iv) the expected total return from income and the appreciation of capital; (v) other resources of the credit union; (vi) needs for liquidity, regularity of income, and preservation or appreciation of capital; and (vii) an asset’s special relationship or special value, if any, to the purposes of the credit union;

(4) whether facts relevant to the investment and management of its assets can be reasonably verified;

(5) whether the investment or management decision would reasonably diversify the investments of the credit union in order to bring the credit union’s portfolio into compliance with the

purposes, terms, and the other circumstances of the credit union, and with the requirements of this section;

(6) the costs of any decision in investing and managing credit union assets and whether such costs are appropriate and reasonable in relation to its assets.

The investments under this section shall not exceed 20 per cent of the credit union's assets.

Such investments shall be subject to annual review by the board of directors of the credit union and shall be subject to periodic review by the division of banks during the course of examinations pursuant to section 2 of chapter 167.

SECTION 5. Chapter 294 of the acts of 1961, as most recently amended by chapter 253 of the acts of 2010, is hereby amended by inserting after section 12 the following section:—

Section 12A. Upon a two-thirds vote of its board of directors, and having established that such activity will not adversely affect its safety and soundness; and having adequate policies and procedures to ensure such investments governing the performance of the corporation and its employees, to minimize any credit, market, liquidity, operations, legal and reputational risks to the corporation, it may apply to the commissioner to make investments under the "Prudent Man" authority, so-called, authorized to state-chartered credit unions pursuant to section 67B of chapter 171 of the General Laws. Any such approval granted by the commissioner shall be subject to such conditions and limitations as he may impose.

The corporation may apply to invest up to 20 per cent of its assets under the authority of said section 67B. The percentage of such assets authorized shall be determined by the commissioner.

The commissioner may increase, modify, curtail or rescind or otherwise limit the corporation's authority make such investments under the authority of said section 67B.